

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE:

PETITION FOR EXEMPTION OF
CERTAIN SERVICES

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T.R.A. DOCKET ROOM
DOCKET NO. 03-00391

**CONSUMER ADVOCATE AND PROTECTION DIVISION'S
RESPONSES TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
SECOND SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), and hereby submits the following responses to the second set of discovery requests propounded by BellSouth Telecommunications, Inc. ("BellSouth"):

1. Please refer to the response to the Consumer Advocate's response to BellSouth's First Set of Interrogatories, Interrogatory No. 5, specifically, the paragraph regarding resale. Please state every reason that you believe resale rates could not be based on the rates requested in filed price lists, rather than tariffs. Include in your answer both legal and practical considerations.

Response: Federal law imposes a duty upon incumbent local exchange carriers, such as BellSouth, to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to non-carrier customers; and it imposes a further duty to not prohibit or impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications

services. *See* 47 U.S.C.A. § 251(c)(4) (2001); 47 C.F.R. §§ 51.605(e) & 51.613(b) (2003). PRI service is a telecommunications service that falls under this section of the federal Act. The TRA therefore should not enter an order that exempts an incumbent LEC from regulatory requirements governing its resale of PRI service under federal law.

Telecommunications tariffs are an integral part of the federal resale scheme. *See, e.g.,* Local Competition Order, FCC 96-32, 1996 WL 452885, ¶¶ 872, 939 (Aug. 8, 1996) (¶ 872 concluding that a minimum list of services subject to resale requirements need not be prescribed because state commissions, incumbent LECs, and resellers can determine such services by examining the incumbent LEC's tariffs, and ¶ 939 concluding that resale conditions and restrictions are found in the incumbent LEC's underlying tariffs); Final Order in Docket No. 96-01331 at 7 (Tenn. Reg. Auth. Jan. 17, 1997) (ordering that the wholesale discount be established as a set percentage off the tariffed rates).

Accordingly, an incumbent LEC's tariffing or price listing of PRI services after the completion of this exemption docket must operate as tariffs operate today with respect to an incumbent LEC's federal resale obligations. In particular, through public filings this process must provide a transparent basis for a reseller or potential reseller to: (1) identify PRI services available for resale (i.e., identify all PRI services that the incumbent LEC provides to its retail customers); (2) reference any conditions or limitations on the provisioning of PRI services; and (3) calculate the wholesale price of PRI services pursuant to federal and state laws and regulations. The Consumer Advocate contends that a public filing process that incorporates these minimum requirements, such as the process in place today, will assure the maintenance of a viable system of resale once this docket is concluded. The Consumer Advocate would contend that federal resale requirements would

be undermined to the extent that an incumbent LEC's compliance with these minimum requirements may be exempted.

2. Please refer to the response to the Consumer Advocate's response to BellSouth's First Set of Interrogatories, Interrogatory No. 5, paragraph 2, regarding "anticompetitive conduct." Please explain every reason that you believe the use of a price list would interfere in any way with the definition of the relationship between BellSouth and its customers, if all terms and conditions currently reflected in BellSouth's tariff remain in the tariff with the sole exception of the price for PRI service, as BellSouth sought with respect to intraLATA toll. State in your answer every basis on which you would contend that the TRA's oversight would be affected if the tariff currently on file reflecting PRI service was altered only such that the price for such services was removed and contained instead in a price list consistent with the relief sought with respect to intraLATA toll in this docket.

Response: Tariffs are binding instruments that function in lieu of a contract between a customer and a telecommunications service provider and serve as the official published list of rates, charges, terms and conditions governing the provision of the service or facility. Thus, the Consumer Advocate maintains that tariffs define the business relationship between a telecommunications service provider and its customers. This business relationship is generally the focus of any inquiry into consumer or competition issues. Presently, tariffs are subject to the TRA's approval, suspension, and revocation. This tariffing process is one of the primary mechanisms that the TRA may utilize to protect consumer interests and promote competitive telecommunications policies.

If the tariff currently on file reflecting PRI service was altered only such that the price for such services was removed and contained instead in a price list, the TRA's oversight, described

above, would not be adversely affected if all of the following conditions are met: (1) all terms and conditions currently reflected in BellSouth's tariff remain in the tariff with the sole exception of the price for PRI service; (2) all rates and charges for PRI service are set forth in a publicly-filed price list; (3) the price list represents a binding instrument that functions in lieu of a contract between a customer and a telecommunications service provider and serves as the official published list of all rates and charges for PRI service; (4) the tariff containing the terms and conditions of PRI service is clearly cross-referenced to the price list containing the rates and charges for such PRI service; and (5) the price list remains subject to approval, suspension, and revocation by the TRA in order to protect and advance the interests of consumers and competitive telecommunications policies. To the extent any of these conditions are not met, the Consumer Advocate would contend that the price listing of PRI services would interfere with the definition of the business relationship between a telecommunications service provider and its PRI customers and would adversely affect the TRA's oversight of the provisioning of PRI services in Tennessee.

3. Please refer to the response to the Consumer Advocate's response to BellSouth's First Set of Interrogatories, Interrogatory No. 5, specifically paragraph 4 of your response. State every fact on which you base the statement that "consumers may find valuable, including pursuant to tariffing requirements, advanced notice of changes in the rates, terms and conditions of service."

Response: The Consumer Advocate's response to BellSouth's First Set of Interrogatories, Interrogatory No. 5, paragraph 4, is based upon the following: It is in the interest of consumers to provide them with advanced notice of increases in service rates and significant changes in terms and conditions of service because sufficient notice of any such rate increases or changes will enable

consumers to make informed decisions regarding the continuation of service or the selection of an alternative service provider prior to being adversely affected by any such rate increases or changes. As a general matter, consumers of all products and services, including telecommunications services, are entitled to know the purchase price of the good or service and to understand the terms of the sale before making the purchase decision. The protection of this basic consumer interest in competitive telecommunications markets is provided for in Tenn. Code Ann. § 65-4-123.

4. Please state whether you will contend in this docket that the market in Tennessee for PRI service is less competitive in any fashion than the market for PRI service in any other state in the US.

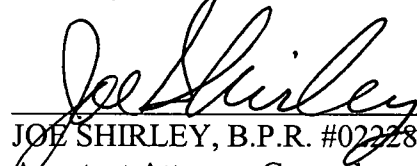
Response: BellSouth has stated that comparison of the Tennessee market to markets elsewhere in the United States may provide useful information on which the TRA may base its decision about whether the competitive nature of PRI service in Tennessee is sufficient to merit relief under Tenn. Code Ann. § 65-5-208(b). It would assist the Consumer Advocate if BellSouth would provide the comparative information that it believes would be useful in this docket for evaluating the competitive nature of the PRI service market in Tennessee. The Consumer Advocate has not completed its investigation and analysis of this issue and, therefore, does not yet know whether it may contend that the market in Tennessee for PRI service is less competitive in any fashion than the market for PRI service in any other state. As the Consumer Advocate's investigation moves forward, it will, in accordance with Rule 26 of the Tennessee Rules of Civil Procedure, supplement its response to this discovery request once it is determined whether the Consumer Advocate will make such a contention.

5. Please identify and produce all summaries, reports, and analysis in your possession regarding the market for telecommunications services to business customers in Tennessee.

Response: The Consumer Advocate objects to this discovery request on the grounds that it is overly broad, unduly burdensome, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and requests information that is protected by the attorney work product doctrine and the attorney-client privilege. Requiring the Consumer Advocate to identify and copy everything in its possession regarding the market for business telecommunications services would be unreasonably time consuming, expensive, and wasteful, especially inasmuch as such information may not even be related to the PRI service market or BellSouth's request to exempt PRI services from certain regulatory requirements in Tennessee. Additionally, the Consumer Advocate will not produce any of the requested information to the extent that it calls for mental impressions, conclusions, opinions, or legal theories of the Consumer Advocate's attorneys or other representatives concerning the litigation or information prepared or obtained in anticipation of the litigation, which are protected from discovery under Rule 26 of the Tennessee Rules of Civil Procedure. Without waiving these objections, the Consumer Advocate states that it is continuing its investigation and analysis of the issues presented in this docket and, once this phase of the docket is completed, the Consumer Advocate will supplement this response to provide BellSouth with any summaries, reports and analysis regarding business telecommunications markets that the Consumer Advocate intends to rely upon to support its position in this docket.

RESPECTFULLY SUBMITTED,

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Dated: September 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via first-class U.S. Mail, postage prepaid, on September 13, 2004, upon:

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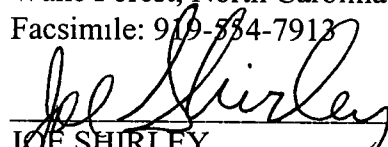
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